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John R. Mengel, Chief Economist  
USDA/AMS/Dairy Programs  
Office of the Chief Economist  
STOP 0229 - Room 2753  
1400 Independence Ave. SW  
Washington, DC 20250 - 0229

*Re: Dairy Product Mandatory Reporting Regulations;  
Docket #AMS - 07 - 0047; DA- 06 -07*

Dear Mr. Mengel:

This letter is submitted on behalf of Dairy Producers of New Mexico. Dairy Producers of New Mexico is a voluntary trade association of dairy farmers located in New Mexico and West Texas.

Dairy Producers of New Mexico generally supports the regulations issued by the Department on July 3, 2007. DPNM has long believed that one of the strengths of the federal milk marketing program is the collection and dissemination of clear and verifiable market data. While somewhat overdue, the interim final rule is an important step toward guaranteeing that the information on milk product prices gathered by AMS is as accurate as it can be. There is, however, room for additional improvement.

DPNM continues to support the utilization of Chicago Mercantile Exchange data to establish the component prices used in setting minimum prices under the Federal Milk Marketing Orders. The use of this publicly available and transparent data provided by the CME would render unnecessary the collection and auditing of sales data.

While DPNM generally supports these regulations, we do have several specific comments.

First, the regulations dealing with verification and enforcement should include explicit authority that provides the federal milk market administrators power to recover from handlers funds not paid to the producer settlement fund in the event that an audit reveals negligent or purposeful misrepresentation of sales prices or volumes. In such instances, a handler, who misreported prices



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Page 2 of 2

would be obligated to account to the various producer settlement funds for the shortfalls occasioned by their errors. While this may seem to be a harsh provision, the recent problems with the reporting of nonfat dry milk prices by Dairy America indicates the dramatic negative impact that misreporting can have on producer incomes. Handlers reporting prices under these regulations must be held to high standards of accuracy and integrity. Had there been regulations on the books that would have held Dairy America accountable for its inexcusable reporting of prices, perhaps it would have taken a bit more care before submitting its data to USDA.

Second, the current provisions that provide for the exclusion of prices set more than 30 days before the transaction is completed is appropriate. As other commenters have described, a 30 day time frame is most advantageous for providing the market with true spot price information. The possible movement by California to the exclusion of forward price contracts set more than 90 days before shipment is an improvement over their current procedures. But we believe that a 30 day window is more appropriate to provide timely and accurate information on current prices taking into account then current supply and demand functions. We have operated for years with California employing one reporting standard and the federal government utilizing another. Should California adopt a 90 day time frame and USDA adopt a 30 day time frame, the pricing discrepancy described by Western United Dairymen should not pose any greater problem than we currently face. Just like Western United Dairymen, we would prefer that California and the federal system operate on a single standard. But we believe that it is more important to utilize the short time frame proposed by USDA than to have uniformity.

Finally, the regulations should be revised to exclude to not only those contracts priced more than 30 days before delivery, but also to exclude those sales contracts that reference a defined price series plus or minus a basis, entered into more than 30 days before delivery. These contracts, regardless of how they were classified in the past, should not be treated as a contract with a price adjustment, even if the reference price is determined within 30 days of sale. The regulations should be clarified to treat such contracts as forward price contracts, rather than cash basis contracts, and exclude them from reporting. The inclusion of such contracts in the reported prices leads to circularity in prices and insulates the market from receiving accurate information about spot prices for dairy products.

We appreciate the opportunity to comment on these regulations.

Very truly yours,  
YALE LAW OFFICE, LP

Benjamin F. Yale